

IRVIN WALL

IBLA 82-1002

Decided September 30, 1982

Appeal from decision of Oregon State Office, Bureau of Land Management, rejecting in part oil and gas lease offer OR 32819.

Affirmed.

1. Oil and Gas Leases: Cancellation -- Oil and Gas Leases:
Noncompetitive Leases

Where a noncompetitive regular offer for an oil and gas lease contains minor defects, the resultant lease shall not be canceled upon the request of a subsequent offeror who filed after the lease had been issued to the first qualified applicant.

APPEARANCES: Irvin Wall, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Irvin Wall appeals from the June 3, 1982, decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting in part his oil and gas lease offer OR 32819 because portions thereof were embraced in outstanding oil and gas leases.

Crescent Petroleum Corp. (Crescent) filed September 17, 1980, a noncompetitive regular offer to lease (oil and gas), OR 24794, for 4,630.46 acres, including T. 21 S., R. 18 E., W 1/2, N 1/2 NE 1/4 sec. 11, Willamette meridian. An oil and gas lease was issued to Crescent effective July 1, 1981.

Intermountain Energy, Inc. (Intermountain) had filed on September 17, 1980, a noncompetitive regular oil and gas lease offer, OR 24810, for 4,747.96 acres, including T. 21 S., R. 18 E., S 1/2 NE 1/4, N 1/2 SE 1/4, SW 1/4 SE 1/4 sec. 11, Willamette meridian. The lease was issued to Intermountain effective July 1, 1981.

Appellant filed a noncompetitive regular offer to lease (oil and gas), OR 32819, on September 4, 1981, for T. 21 S., R. 18 E., sec. 11: all, Willamette meridian, totaling 640 acres. On June 3, 1982, BLM rejected the offer in part because portions of the lands requested were included in oil and gas leases OR 24794 and OR 24810. Appellant was issued a lease effective July 1, 1982, for the remainder of sec. 11: SE 1/4 SE 1/4, totaling 40 acres.

Appellant appeals from the partial rejection of his offer. In a statement of reasons received July 27, 1982, appellant withdrew the appeal as it pertains to oil and gas lease OR 24810 (Intermountain), and requested the Department to cancel lease OR 24794 (Crescent) because, (1) the lease acreage is in Deschutes County rather than Crook County as shown on offer OR 24794, and (2) the offer was not dated by the applicant.

Appellant seeks cancellation of the Crescent lease issued prior to appellant's filing of an offer to lease some of the same lands. Crescent, in its offer, had indicated that the lands are located in Crook County. The lands are actually situated in Deschutes County near the Deschutes-Crook County line. The lease, however, correctly reflects that the lands are in Deschutes County.

The president of Crescent signed the offer on behalf of the company but failed to date the document. The filing date of September 17, 1980, however, appears thereon. Crescent's qualifications to hold the lease were reaffirmed in a supplemental certificate signed and dated by the president of Crescent on May 25, 1981.

[1] An offer to lease for oil and gas does not create a property right in the offeror, but is merely a hope or an expectation. See McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Hannifin v. Morton, 444 F.2d 200, 203 (10th Cir. 1971). Thus, the rejection of an oil and gas lease offer can be properly sustained even for trivial reasons relating solely to administrative convenience and the orderly conduct of the Department's leasing program. However, the granting of a lease--unless it is void from its inception--creates a property right. The lessee, unlike the offeror, does have a vested interest, and legal and equitable rights which are administratively defeasible under the statutory authority of the Secretary for only good and substantial cause. See Boesche v. Udall, 373 U.S. 472, 478-480 (1963); Union Oil Co. v. Morton, 512 F.2d 743, 747 (9th Cir. 1975).

A defective over-the-counter offer can be corrected and rejection thereof is discretionary. See NL Industries, Inc., 41 IBLA 38 (1979); Barbara A. Joeckel, 30 IBLA 376 (1977). The defects appellant cites are insignificant and nonfatal in filing a noncompetitive regular offer to lease for oil and gas.

The regulations require a legal description conforming to the public land survey system if the land is surveyed land, as this land description does. See 43 CFR 3102.2-3. Indication of the county wherein the described land lies is an added convenience found in the offer form. In addition, the regulations governing noncompetitive regular offers merely require the offeror, or agent, to sign the offer. See 43 CFR 3111.1-1. No express provision for noncompetitive regular offers requires a contemporaneous date, as is required with other types of offers. A date is mandatorily affixed to the form reflecting when the rights to the lease actually vest. The offer form itself, Form 3110-1, warns that an improperly prepared offer "may be rejected," but does not mandate automatic rejection.

Crescent supplied the significant information for a noncompetitive regular offer to lease for oil and gas, and BLM accepted the offer as adequate. There were no intervening rights in the lands before Crescent's lease became effective July 1, 1981. Appellant's own offer was not filed until September 24, 1981. Thus, even assuming that the discrepancies in Crescent's offer were disqualifying, the offer enjoyed priority from the time they were corrected.

Since the description and signatures, as corrected or supplemented, were accepted as adequate for their intended purpose, we see no reason to disqualify the lessee and cancel the lease.

It should be noted that even were appellant successful in procuring the cancellation of Crescent's lease, no benefit would accrue to him, and his offer would still have to be rejected for two reasons. First, under the "notation rule" the land was not available to over-the-counter lease offers regardless of whether the noted lease was void, voidable or valid. Paiute Oil and Mining Corp., 67 IBLA 17 (1982). Second, where an oil and gas lease has issued but is subsequently canceled, the land can only be made available for leasing again pursuant to the simultaneous filing procedures prescribed by 43 CFR 3112. Piaute Oil and Mining Corp., *supra*. As no relief can be accorded Wall in consequence of this appeal, his standing to maintain the appeal is called seriously into doubt. See Pullman v. Chorney, 509 F. Supp. 162 (D. Colo. 1981); Duncan Miller, 44 IBLA 259 (1979); See also Pacific Legal Foundation v. Watt, 529 F. Supp. 982 (D. Mont. 1982)

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Gail M. Frazier
Administrative Judge

